

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Emergency Broadband Benefit Program)	WC Docket No. 20-445
)	

NATIONAL LIFELINE ASSOCIATION PETITION FOR LIMITED WAIVER

Pursuant to Section 1.3 of the Commission’s rules (47 C.F.R. § 1.3), the National Lifeline Association¹ (NaLA), by and through the undersigned counsel, hereby requests that the Commission grant a limited waiver of the Emergency Broadband Benefit (EBB) Program connected device reimbursement rules for all EBB participating providers.

NaLA’s petition echoes a petition filed by Cox Communications, Inc. (Cox), which asked the Commission to waive, under certain circumstances, the requirement that a provider participating in the EBB program may only seek reimbursement for a discounted connected device provided to a subscriber if that subscriber is also receiving the EBB service from that provider.² In addition, as further explained in this petition, all providers, whether or not they seek to rely on the requested waiver, must have access to accurate real-time data in the National Lifeline Accountability Database (NLAD) regarding whether a prospective subscriber has previously received a connected device through the EBB program.

¹ NaLA is the only industry trade group specifically focused on the Lifeline segment of the communications marketplace. It supports eligible telecommunications carriers (ETCs), distributors, Lifeline supporters and participants, and partners with regulators to improve the program through education, cooperation and advocacy. See <https://www.nalalifeline.org/>.

² See Cox Petition for Limited Waiver, WC Docket No. 20-455 (May 10, 2021) (seeking limited waiver of 47 C.F.R. § 54.1606(e)(3)) (Cox Petition).

The Commission Should Waive Sections 54.1606(e)(3) and 54.1608(d) of the EBB Program Rules Requiring That an EBB Provider Provide EBB Service to a Subscriber on the Snapshot Date to Receive Reimbursement for a Discounted Connected Device

The EBB program’s rules allow providers to submit claims for reimbursement for providing EBB service and discounted connected devices through the Universal Service Administrative Company’s (USAC’s) Lifeline Claims System.³ For EBB service reimbursement claims, providers may only seek EBB support “based on the number of actual qualifying low-income households listed in the National Lifeline Accountability Database that the participating provider serves directly as of the first of the month.”⁴ The EBB program’s rules further provide that a “participating provider shall not seek a connected device reimbursement for a subscriber that is not receiving the Emergency Broadband Benefit for service provided by the same participating provider.”⁵ Thus, a provider may not claim a reimbursement for providing a connected device to a subscriber unless that subscriber receives EBB service from that provider, reflected in the NLAD, as of the first of the month (commonly referenced as the snapshot date).

As Cox stated in its petition, the Commission implemented the uniform first-of-the-month snapshot date and the connected device reimbursement requirements to help facilitate the prompt processing of valid claims and to guard against waste, fraud, and abuse.⁶ While the EBB program’s claim reimbursement rules are reasonable in a situation where a subscriber receives a connected device and service from a provider and remains a subscriber with that same provider

³ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29, ¶ 88 (2021) (EBB Program Order); *see also* 47 C.F.R. § 54.1608.

⁴ 47 C.F.R. § 54.1608(a).

⁵ 47 C.F.R. § 54.1606(e)(3). In addition, Section 54.1608(d) states, “A participating provider that, *in addition to providing the Emergency Broadband Benefit to an eligible household*, provides such household with a connected device may be reimbursed up to \$100.00 for such connected device....” (emphasis added).

⁶ *See* Cox Petition, 2 (citing EBB Program Order, ¶ 87).

on the snapshot date, the rules unfairly penalize providers that sell a discounted connected device to a subscriber who decides to de-enroll from the EBB program or change to a different EBB service provider at any time prior to the next snapshot date.⁷

The example set forth in the Cox petition is applicable to any participating provider that provides discounted connected devices to subscribers with the intent of seeking reimbursement from the EBB Program. As detailed by Cox, a provider would not be eligible to seek reimbursement for a connected device provided to an eligible subscriber if that subscriber exercises his or her right to de-enroll from the EBB program or switch providers on any date prior to the next snapshot date.⁸ Under the foregoing circumstances, the Commission's rules linking reimbursement claims for connected devices to the provision of EBB service on the snapshot date exposes providers to significant financial risk and discourages them from offering connected devices.

NaLA, like Cox, requests that the Commission waive its requirement that a provider may only submit a reimbursement claim for connected devices for subscribers who are receiving EBB service from that provider on the snapshot date, if the provider certifies that: (1) the subscribers were enrolled with the provider when the connected device was provided to the subscriber; (2) at the time the connected devices were provided to the subscriber the NLAD did not indicate that the subscribers already received discounted connected devices; and (3) the provider submitted updates to the NLAD to reflect the sales of the connected devices during the month.

⁷ A subscriber may request a provider to de-enroll them from the EBB program at any time. The provider must de-enroll the subscriber within two business days after the request. *See* 47 C.F.R. § 54.1609(c); EBB Program Order, ¶ 144 & n.416. A subscriber may also transfer their EBB Program benefit to another provider at any time. *See* EBB Program Order, ¶ 38.

⁸ *See* Cox Petition, 2.

The Commission Should Direct USAC to Immediately Update the NLAD API “Verify Call” Functionality to Provide Information on the Status of an EBB Applicant’s Eligibility for the EBB Device Subsidy

The EBB rules require providers seeking reimbursement for a connected device to query the NLAD to determine whether a prospective discounted connected device recipient has previously received a connected device benefit and may not seek reimbursement if the NLAD indicates that a prospective subscriber has already received a connected device benefit.⁹ NaLA generally agrees with Cox’s assertion in its petition that as long as the NLAD is updated to reflect the provision of a connected device to a subscriber, a subsequent provider checking the NLAD would receive an indication that the subscriber already received a connected device discount, thereby preventing the subscriber from receiving more than one discounted connected device and preventing waste, fraud and abuse in the program. However, the NLAD does not currently afford providers with access to accurate real-time data regarding whether EBB applicants have previously received a connected device through the EBB program and NaLA understands this functionality is still several weeks away even though the EBB Program launched on May 12, 2021. The absence of this functionality precludes providers from effectively querying the NLAD to determine whether a prospective connected device benefit recipient has previously received a connected device benefit, as is required by Section 54.1606(e)(1) of the Commission’s rules. Further, providers distributing devices will be required to certify prior to seeking reimbursement for connected devices that “no such household had already received a reimbursable connected device from the participating provider *or any other participating provider* when the connected device was distributed to the household.”¹⁰ Until the

⁹ 47 C.F.R. § 54.1606(e)(1)-(2).

¹⁰ Emergency Broadband Benefit Program Reimbursement Claims, USAC Webinar at 34 (April 2021) (emphasis added).

NLAD functionality described herein is made available to providers they will be certifying based on what they know, rather than what the NLAD knows. This deficiency must be immediately addressed by updating the NLAD application programming interface (API) “verify call” functionality to provide information on the status of an individual’s eligibility for the EBB device subsidy. Specifically, the NLAD API could respond with a “soft fail” to indicate that the consumer already has received a device or a “hard fail” to indicate that a consumer already has received a device that has been reimbursed.

Activation of such a functionality will improve EBB program integrity by ensuring that a single subscriber does not receive multiple EBB connected devices from different providers. Furthermore, access to real-time information about a prospective subscriber’s connected device history coupled with the limited waiver requested in this petition will assuage providers’ concerns about the financial risk of providing connected devices to subscribers who may decide to terminate their service with the provider before the next snapshot date. As a result, providers will be more likely to offer discounted connected devices to EBB subscribers,¹¹ thereby facilitating consumers’ ability to obtain the benefits of Internet access service.

NaLA’s Request Meets the Commission’s Standard for a Waiver

NaLA’s request for a limited waiver of the requirement that subscribers receive EBB service from a provider on the snapshot date to receive reimbursement for connected device discounts provided by that provider meets the Commission’s standard for a waiver. The Commission can waive its rules “for good cause shown” and it has found good cause for a

¹¹ To date, it appears that only 1 out of 10 EBB providers have chosen to provide connected devices in the EBB Program and Cox has stated that it may be forced to reconsider participating if its petition for waiver is not granted. *See Cox Petition*, 3.

waiver where the particular facts make strict compliance inconsistent with the public interest.¹² The limited waiver described in this petition will enable EBB participating providers to receive reimbursement for discounted connected devices provided to subscribers who have not previously received the connected device benefit even if those subscribers do not remain active subscribers with the same provider as of the snapshot date. Grant of the waiver remedies a financial risk to providers that was inadvertently caused by the EBB program's reimbursement rules while not increasing the risk of waste, fraud and abuse of EBB program resources because the program will only provide a single discounted device reimbursement per subscriber. Indeed, the limited waiver, together with a related direction to USAC to immediately update the NLAD API to reflect receipt of connected device discounts, will improve program integrity by ensuring that a provider who provides a connected device to a subscriber receives the reimbursement to which it is entitled and that each subscriber only receives one connected device benefit.

Grant of the waiver is consistent with the public interest because it supports the EBB Program goal of providing low-income consumers who face financial obstacles to obtaining broadband Internet access service with heavily discounted or free service, as well as a device to connect to that service. As described above, the limited waiver will encourage EBB participating providers to offer discounted connected devices to subscribers without risking the substantial (up to \$100 per subscriber) financial loss that would otherwise occur when a subscriber receives a connected device in a given month but is no longer a subscriber on the snapshot date.

For the foregoing reasons, NaLA respectfully requests that the Commission grant its request for limited waiver and direct USAC to expeditiously update the NLAD API so that all

¹² 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

providers have access to accurate data regarding prospective subscribers' eligibility for the connected device benefit.

Respectfully submitted,



John J. Heitmann
Joshua Guyan
Debra McGuire Mercer
KELLEY DRYE & WARREN LLP
3050 K Street NW, Suite 400
Washington, D.C. 20007
(202) 342-8400 (voice)
(202) 342-8451 (facsimile)
jheitmann@kelleydrye.com

Counsel for the National Lifeline Association

May 24, 2021